

April 19, 2000

Michael G. Ritchie,
Division Administrator
Federal Highway Administration
980 9th Street
Sacramento, California 95814

Dear Mr. Ritchie:

The U.S. Environmental Protection Agency (EPA) has reviewed the Final Environmental Impact Statement (FEIS) for **State Route 125 South, San Diego County, California**. Our comments are provided pursuant to the National Environmental Policy Act (NEPA), Section 309 of the Clean Air Act, and the Council on Environmental Quality's (CEQ) NEPA Implementing Regulations (40 CFR Parts 1500-1508).

The Federal Highway Administration (FHWA) and the California Department of Transportation (Caltrans) propose to construct a new four lane toll road (which will ultimately become an eight lane roadway) in San Diego County between Route 905 near the Otay Mesa Point of Entry and Route 54 in Spring Valley, a distance of approximately 11 miles. The FEIS identifies the preferred alternative alignment as a combination of the Brown Field Modified Revised, Otay Ranch, Eastlake, Horseshoe Bend Modified, and Conduit Road East segments. FHWA acknowledges in the EIS that "(e)nvironmental effects (particularly) related to growth affected by construction of Route 125 South may be substantial."

EPA previously provided comments on the Notice of Intent (NOI) in 1989, the Draft EIS (DEIS) in 1996, and the Draft Supplemental EIS (DSEIS) in 1999. Upon completing these reviews, we found that the DEIS and DSEIS did not adequately assess the potentially significant impacts of the proposal, and, in keeping with EPA's *Policy and Procedures for the Review of Federal Actions Impacting the Environment*, we rated both documents **Category 3 - Inadequate**. Our comments concerning the inadequacies of the NEPA documentation and the potentially significant impacts have been discussed with FHWA and Caltrans in many meetings and telephone discussions since 1996, including the April 4, 2000 meeting with my Deputy Regional Administrator, Laura Yoshii.

Despite our mutual efforts to reach agreement on the content of the EIS and on the resolution of several substantive issues, we remain extremely concerned with the potentially significant

impacts associated with the project and with its NEPA document, which we continue to believe is fundamentally flawed and does not meet the purposes of NEPA. Therefore, we strongly recommend that a Supplemental EIS be prepared and circulated for public review. The Supplemental EIS should contain -

- a thorough analysis of environmental impacts associated with **arterial roadways** to help determine the optimal number and placement of arterials (this analysis should emphasize avoidance and minimization of direct and indirect impacts to waters of the US);
- an environmental analysis of the “**connected actions**” as defined in 40 CFR 1508.25(a)(1), namely the three projects completely dependent on SR125 South and the SR-125 South/905 interchange;
- an environmental analysis of impacts from reasonably foreseeable, but currently unplanned, **urban growth** resulting from construction on SR125 South (Council on Environmental Quality’s *Forty Most Asked NEPA Questions*, number 18);
- a re-examination of the reasonably foreseeable air quality impacts associated with the proposed Route 125 South Project, using the **latest air data**;
- a thorough description of the **types of wetlands and waters** directly and indirectly impacted by the project.

Finally, the NEPA/404 Memorandum of Understanding requires that EPA and the Corps of Engineers (Corps) concur on the least environmentally damaging practicable alternative (LEDPA) and the adequacy of mitigation prior to implementing this project. In our letter to you (dated January 13, 2000) we conditionally concurred on both the LEDPA and the mitigation proposal. Based upon information provided in an April 4, 2000 letter from the U.S. Fish and Wildlife Service, EPA is unable to concur that the preferred alternative identified in the FEIS is the least environmentally damaging practicable alternative (LEDPA) under Clean Water Act Section 404. Inasmuch as information regarding the impacts to aquatic resources from connected actions has not been provided, we must also non-concur on the adequacy of mitigation. I believe it is imperative that this project not proceed until our agencies can agree on an alternative that meets the least environmentally damaging practicable criteria and associated mitigation pursuant to the Clean Water Act.

These issues are more comprehensively discussed in our detailed comments, attached. Thank you for the opportunity to review and provide comments on this EIS. We look forward to working with you in the development of the Supplemental environmental document. When it is

filed with EPA's Washington, D.C. office, please send three copies of the Supplemental EIS to our office, ATTN: David Farrel (CMD-2).

Yours,

Felicia Marcus,
Regional Administrator

cc: Anne Miller, US EPA, Washington DC (Office of Federal Activities)
Fred Skaer, FHWA, Washington DC
Sara Purcell, FHWA, San Francisco (Office of Regional Counsel)
Dinah Bear, CEQ, Washington DC
Susanne Glasgow, Caltrans, San Diego
District Engineer, COE, LA
Mark Durham, COE, LA

Arterial Roadways

Arterial roadways identified in the FEIS as “projects to be undertaken by others” have the potential for significant disruption to aquatic resources. Such resources are present in varying concentrations throughout the project area and in particular on Otay Mesa. We find no evidence in the FEIS that would lead agencies and the public to assume or believe that the future arterial facilities could be successfully developed or proceed without inauguration of Route 125 South. A full discussion of the interchanges and associated roadways and their environmental impacts is lacking in the FEIS. Such a discussion is necessary to provide the public and resource agencies with sufficient information to evaluate the merits of, and impacts associated with, implementing the proposed project and to determine whether options for avoiding and minimizing impacts from the arterials have been fully considered.

Specific arterial projects identified in the FEIS include the future La Media Road, the future Lonestar Road, the future Piper Ranch Road, the future Harvest Road, the future Otay Valley Road, the future Rock Mountain Road, the future Birch Parkway, a future LRT crossing, the future Mt. Miguel Road, and the future Olympic Parkway. Only the Olympic Parkway arterial has undergone the Clean Water Act Section 404 permitting process and, therefore is the most thoroughly documented in the public record.

Available information indicates that the Olympic Parkway arterial would result in permanent impacts to 7.96 acres of waters of the United States, including 6.94 acres of jurisdictional wetland mosaic and 1.02 acres of non-wetland waters of the U.S. Specific wetland habitats which would be filled include herbaceous wetland (4.29 acres), coastal freshwater marsh (2.04 acres) and lesser acreages of mule fat scrub, southern willow scrub and riparian woodland. Poggi Canyon Creek, the site of the future Olympic Parkway, is one of the last unmodified creeks in western San Diego County from the La Jolla/Torrey Pines area to the Mexican border. It is also one of the last undisturbed canyons in that region running from east to west and one of the three largest tributaries to the Otay River. As such, Poggi Canyon Creek plays a critical role in maintaining the health and functioning of the Otay River watershed. Given that over 98% of the historic riparian and wetland areas in Southern California have been lost, we are concerned that this level of impact can cause or contribute to significant degradation of aquatic resources. We suggest that the placement of the arterials and their connection to SR 125 would have more fully considered avoidance of impacts such as the complete fill of Poggi Canyon Creek. We continue to recommend that an analysis of the arterials and their placement be examined as part of the EIS for the SR 125 project.

Impacts resulting from construction of the Olympic Parkway give rise to serious concerns that other arterials depicted in the FEIS may also have adverse effects on wetlands and other aquatic resources due to comparable hydrology, soils, vegetation and/or species in the Route 125 South

region of influence. Analyzing the US Fish and Wildlife Service National Wetlands Inventory data (1986) indicates that over 49 acres of palustrine wetlands are located within 500 feet of the SR 125 interchange and planned arterials. There are also 5.65 linear miles of stream channel within 500 feet of the proposed project and arterials (US EPA River Reach 3 data, 1997). Lastly SANDAG data (1995) on vegetation and sensitive habitats shows over 106 acres of sage scrub and 394 acres of valley and foothill grassland within 500 feet of the proposed project and arterials. The potential for significant impacts from the project and its associated arterials is high.

As discussed in our March 14, 2000 letter, if the arterials were not fixed in location and number, a general estimate of the expected impacts may be satisfactory. However, the FEIS clearly indicates the exact location of the planned arterials and the number of interchanges and, therefore, the impact assessment should be comparably precise. Because the extent of the potential impacts from the arterial facilities have not been described in the FEIS, agencies and the public are placed at a significant disadvantage when weighing the merits of the specific action alternatives and, more broadly, Route 125 South as a whole. On the other hand, because these future arterial facilities are clearly depicted in the EIS, we presume they are “reasonably foreseeable,” as that term is defined by CEQ in its Regulations (40 CFR 1508.8). Accordingly, EPA believes that a rigorous analysis of the reasonably foreseeable environmental effects of the arterial facilities depicted in the FEIS should be presented in a Supplemental EIS (40 CFR 1508.8). This information is also necessary for review and comment on the CWA Section 404 Permit for the project.

Connected Actions

The CEQ’s NEPA Implementing Regulations at 40 CFR 1508.25 define the scope of an EIS as the range of actions, alternatives and impacts that must be addressed in an EIS. CEQ’s regulations clearly state that actions which “...cannot, or will not, proceed...” without the proposed project should be analyzed in the same impact statement. Furthermore, in Q/A number 18 of “NEPA’s Forty Most Asked Questions,” CEQ states that

“The EIS must identify all the indirect effects that are known, and make a good faith effort to explain the effects that are not known but are ‘reasonably foreseeable.’...(t)he agency is not required to engage in speculation or contemplation about their future plans. But, in the ordinary course of business, people do make judgements based upon reasonably foreseeable occurrences. The agency has the responsibility to make an informed judgement, and to estimate future impacts on that basis, especially if trends are ascertainable...(T)he (lead federal) agency cannot ignore these uncertain, but probable effects of its decisions.”

As it does with its discussion of arterials, the FEIS suggests that the impacts associated with the

SR-125 South and future 905 Interchange "...will be analyzed in a separate environmental document prepared by Caltrans and FHWA." On the other hand, the FEIS highlights the vital importance of Routes 125 South and 905 in facilitating the multiple developments proposed for Otay Mesa and views future Routes 125 South and 905 as *integrally* linked to the local developments proposed or approved for Otay Mesa. The FEIS is quite frank in acknowledging that "an estimated \$5.5 billion in development on Otay Mesa would be delayed or not take place if Route 125 South and Route 905 are not constructed by 2010," further stating that although Otay Mesa currently has east/west access to Route 805, "it is inadequate for the planned growth."

Given the wide ranging environmental implications of these roadways and their physical connectivity, EPA believes that the interchange should be considered a "connected action" as defined by the CEQ at 40 CFR 1508.25(a)(1), and as such, should be analyzed in a Supplemental EIS prepared for the SR-125 project.

The FEIS acknowledges that the project "is expected to substantially affect growth by accommodating planned and approved development" by expanding access to existing developed areas and providing new or improved access to undeveloped land. More specifically, according to the FEIS, three proposed developments (Rolling Hills Ranch Phases II and III; the San Miguel Ranch Project Phase II; and the Otay Ranch Urban Center) *would require* the construction of SR 125 prior to development. It seems apparent that these three locally-approved projects "cannot or will not proceed" unless Route 125 South is constructed. The direct, indirect, and cumulative environmental impacts associated with these actions connected to construction of SR 125 have not been analyzed in sufficient detail in the FEIS. We envision that a variety of adverse effects are reasonably expected to accompany such growth, including air pollution; increased congestion; loss or degradation of wetlands, vernal pools and other habitats; increased water pollution; groundwater depletion/degradation; loss of biological productivity; habitat fragmentation; and increased generation of hazardous wastes. Accordingly, EPA believes that Rolling Hills Ranch Phases II and III, San Miguel Ranch Phase II; and Otay Ranch Urban Center fall within the "scope" of Route 125 South. FHWA's failure to analyze the reasonably foreseeable direct, indirect and cumulative effects of these three proposals in this EIS, in a manner consistent with the CEQ's NEPA Implementing Regulations, leads us to conclude that the current FEIS is inadequate and fundamentally flawed, and that the only appropriate remedy is a Supplemental EIS.

Unplanned Growth

The FEIS acknowledges that, "[i]n the long term...the project may substantially encourage currently unplanned growth related to the industrial development on Otay Mesa and the

associated border crossing.” By providing additional transportation access in this area, according to the FEIS, the project “may remove a barrier to long term development related to expanded trade with Mexico.” This unplanned growth on Otay Mesa would be in addition to 14 major developments already planned for Otay Mesa briefly described in the FEIS, including JetAir, SDGE, San Diego Mesa, San Diego Air Commerce Center, Sun Rose City, Otay Mesa International Plaza, Piper Ranch, Otay Mesa Industrial Park, La Media Business Park, Airway International Business Park, De la Fuente, Otay International Center, Lot 7 OIC, and the Brown Field Technology Center. A variety of adverse effects may be reasonably expected to accompany such unplanned (and previously planned) growth, including air pollution, increased congestion, loss or degradation of wetlands, vernal pools and other habitats, increased water pollution, groundwater depletion/degradation, loss of biological productivity, habitat fragmentation, increased hazardous waste generation, and increased releases of hazardous constituents into air, soil and water.

In its NEPA regulations at 40 CFR 1508.8(b), CEQ clearly includes “...growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems” as being appropriate for inclusion in an EIS. The SR-125 FEIS fails to do so. A supplemental EIS must be prepared to achieve the intent of NEPA, comport with CEQ’s NEPA regulations, and provide for full public disclosure of the expected direct, indirect, and cumulative environmental impacts.

Air Quality

The FEIS relies on CO data from 1991-93 and ozone data from 1987-93. CEQ regulations at 40 CFR 1502.24, provide that agencies shall “insure the...scientific integrity of the discussions and analyses in environmental impact statements.” While it is unclear whether the most current air quality data would have any implications for this particular project, our concern is heightened because of statements in the FEIS that the Otay Ranch General Development Plan “would add to existing violations of federal and state ozone standards.” EPA believes that FHWA should re-examine the project in light of the most current air data, particularly given statements in the FEIS that the project would accommodate planned and encourage unplanned urban growth. The new data and the accompanying analysis should be presented in a Supplemental EIS for full public disclosure.

Appendix C of the FEIS contains a number of summaries for the many developments that are proposed for the area. We are greatly concerned with some of the statements in those summaries as they pertain to air quality and the growth projections for the County. For example the Rancho San Miguel Environmental Impact Report (EIR), the Salt Creek Ranch EIR, the Otay Ranch General Development Plan (GDP), and the Otay Ranch Sectional Planning Area (SPA) One

GDP/Subregional Plan (SRP) Amendments identify that there will be significant impacts to air quality in the area, resulting from this additional growth. The Otay Ranch SPA One GDP/SRP Amendments even go so far to say that the project will exceed SCAQMD thresholds, though those thresholds are not identified. We are also very concerned that the Otay Ranch General Development Plan “would exceed the current SIP air quality attainment regulations,” and “would add to existing violations of federal and state ozone standards.” Additionally, a number of the EIRs state that the anticipated contribution to growth in the area was not included in the Series 5 or 7 SANDAG growth projections. Recently SANDAG has been using series 8 growth projections for the basis of the air quality conformity determinations, but the question is if any of the developments which were left out of previous analyses are included in this most recent Series 8. FHWA and Caltrans should state, in the Supplemental EIS, whether:

- 1) all of the developments listed and described in Appendix C are included in the Series 8 forecasts, and
- 2) if any of those are not included, describe the implications that these developments, which the FEIS acknowledges become more viable with the toll road completion, may have on the air quality for the region.

As the FEIS acknowledges, Route 125 South would accommodate traffic growth associated with planned and approved development in San Diego County and is expected to have substantial secondary effects on the rate of growth in the short-term, and on the location and total amount of growth over the long-term. It is not clear from the FEIS, whether Route 125 South could indirectly exacerbate exceedences of Federal air quality standards, which would be inconsistent with Federal air quality requirements. As part of its public disclosure under NEPA, FHWA should determine whether the project would facilitate locally-approved developments which would exceed current SIP requirements and/or add to existing violations of Federal air quality standards. FHWA should also propose and publically disclose measures to minimize such effects. By association, the additional development, whether accounted for or not, has implications for traffic demand. Some of the development plans acknowledge that there would be increases in traffic generation and mobile source emissions. For example, the Otay Ranch SPA I EIR (1996) stated that an additional 59,295 Average Daily Trips would be generated upon buildout affecting street, freeway, and intersection performance. The San Diego Air Commerce Center at Brownfield Airport Master Plan EIR (1999) states that the additional development will impact regional freeway efficiency and have a significant, unmitigatable impact. Yet, if the population increase was not included in the growth projections, as stated above, then we assume that the related increase in traffic demand was also not included. FHWA should evaluate and discuss the merits of our assumption and account for the trip demand and the implications for the street network and air quality.

Aquatic Resources

EPA is concerned that the FEIS lacks sufficient information describing the impacts to aquatic resources as well as the degradation that may result to those resources from the direct, indirect, and cumulative impacts from the proposed project. We appreciate the effort that FHWA and Caltrans made to document the vernal pool impacts and describe the special status species within the pools. However, there was not a comparable effort to discuss the impact to other aquatic resources including a discussion of the type, maturity or diversity of vegetation, presence or absence of special status species, diversity of the habitat, connectivity of the vegetation to upland areas, importance of an area for wildlife movement, and importance of the resource in maintaining integrity of downstream waters. This assessment of the resources is necessary to define the severity and significance of the proposed project's impacts.

The FEIS also failed to discuss the significance of the direct loss of the 13 acres of aquatic resources in the context of the diminishing resources in Southern California. The severity and geographic scope of the direct loss should also be considered in conjunction with any downstream impacts, associated impacts from the arterials, the SR 125 South/905 interchange, and projects dependent upon SR 125 South.

In our comment letter on the DEIS, we discussed the lack of information and analysis of potential impacts to the downstream waters that may result from the project. The FEIS concludes that there are no indirect effects to waters from the proposed project. Culverting and filling of a stream and reduction in vegetation and changes in bank protection typically cause degradation downstream of the area directly impacted. Downstream impacts could include increased sedimentation, change in slope and velocity, and increases in water temperature and pollutant loading from loss of upstream wetlands and vegetation. There was no analysis or examination of these types of impacts. EPA believes that impacts to aquatic resources, particularly from the arterials, were not adequately described in the FEIS and should be presented in a Supplemental EIS. Caltrans will also be required to present much of this information when requesting a CWA Section 404 permit for the project.

NEPA/404 Process

FHWA and Caltrans failed to ensure that the project's CWA Section 404 permit process was conducted in accordance with the provisions of the NEPA/404 Memorandum of Understanding (MOU). The MOU between our agencies provides that circulation of the DEIS and the CWA

Section 404 Public Notice (PN) “...must be closely coordinated.” The MOU further envisions that FHWA would evaluate comments it receives on the DEIS at the same time the Corps of

Engineers would evaluate the comments it receives on the PN. This coordination has not been accomplished, either at the time of the 1996 DEIS or at the time of the 1999 Draft Supplemental EIS. In fact, we are not aware that a PN has yet to be issued for the SR-125 South project. Despite this significant shortcoming, of what is expected under the MOU, the transportation agencies requested concurrence from EPA and the Corps that the NEPA preferred alternative is the LEDPA and that the project mitigation is adequate pursuant to the MOU.

While EPA did provide concurrence on the LEDPA, it was *conditioned* upon the US Fish and Wildlife Service's (FWS) agreement that the preferred alternative, Conduit Road East (CRE) would be less environmentally intrusive than Conduit Road West (CRW). In their April 4, 2000 letter to FHWA, FWS subsequently stated unequivocally that "CRW would have fewer impacts to wildlife resources than CRE," the preferred alternative, thereby precluding our concurrence with the preferred alternative's designation as the LEDPA. Inasmuch as the preferred alternative under NEPA is not the LEDPA under CWA, it would be very difficult for the FHWA to make a finding that the project comports with all requirements of the CWA. Accordingly, in preparing a Supplemental EIS, FHWA should ensure that the NEPA/404 process is strictly followed as envisioned in the NEPA-404 MOU.

EPA also provided *conditional* concurrence on the proposed mitigation strategy. Two conditions were stated in providing our concurrence: 1) Assurances that the mitigation site (Rancho Jamul) had sufficient up-front mitigation credit; and 2) FHWA/Caltrans would submit a final mitigation and monitoring plan that included mitigation for indirect impacts. Neither of these conditions has been met to date. Upon confirmation of the full severity and scope of the direct, indirect, and cumulative impacts upon aquatic resources, EPA will review the final mitigation plan and make our determination of its adequacy.

Cumulative Impacts

In addition to the specific Appendix C discussion contained in the Air Quality Section of our comments, we are quite concerned that the FEIS Appendix contains no analysis, nor recognition, of cumulative impacts from the arterials associated with SR-125, nor does it discuss the cumulative effects of future Route 905. We recommend that FHWA follow guidance provided in CEQ's *Considering Cumulative Effects Under the National Environmental Policy Act* in compiling and discussing cumulative impacts for Route 125 South and its connected actions within a Supplemental EIS. CEQ issued this guidance to federal agencies in 1997.

